IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

OP.No. 20864 of 1999(H)

PETITIONER:

S.RAJAN,
OPERATOR GRADE V,
I.P.P.PRESS,K.H.R. & W.S., RED CROSS ROAD,
GENERAL HOSPITAL CAMPUS,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:
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1. **KERALA HEALTH RESEARCH & WELFARE SOCIETY, RED CROSS ROAD, GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR.**

2. **THE MANAGING DIRECTOR, KERALA HEALTH RESEARCH & WELFARE SOCIETY, GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM.**

BY ADV. SRI.M.V.BOSE
SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.P.SATHEESAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.20864/1999 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.E4-1582/86/KHRWS DTD. 25/07/1997.**

EXT.P2: **COPY OF THE JUDGMENT IN O.P.NO.15325/97 Y DTD. 22/03/1999.**

EXT.P3: **COPY OF THE ORDER NO.2966/99/KHRWS DTD. 26/05/99.**

EXT.P4: **COPY OF THE ORDER NO.2966/99/KHRWS DTD. 15/06/99.**

EXT.P5: **COPY OF THE REPRESENTATION SUBMITTED BEFORE THE KHR & WS BY THE PETITIONER, DTD. 22/10/92.**

EXT.P6: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT, DTD. 31/05/99.**

EXT.P7; **COPY OF THE LETTER NO.2966/99/KHRWS, DTD. 17/06/99 TO THE PETITIONER.**

EXT.P8: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE MINISTER FOR HEALTH DTD. 14/12/2000.**

/TRUE COPY/

KSS

O.P.NO.20864/1999 H

S.SIRI JAGAN, J.

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O.P.No.20864 of 1999

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Dated this the 5th day of March, 2007

J U D G M E N T

The Kerala Health Research & Welfare Society, the 1st respondent herein, is a society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act. The society is an autonomous body and the administration and management of the society vest with the governing body as per the Rules and Regulations. The 2nd respondent is the executive head of the society. The functions of the society included collecting, co-ordinating and disseminating medical scientific and other knowledge and data, statistics and information regarding patients in Government hospitals and also to print, publish and circulate brochures, pamphlets, charts etc in large numbers. For this purpose, the society started the Indian Population Project Offset Press (IPP Press) to cater to its printing needs as per the unanimous decision of the governing body. Initially the petitioner and other employees of the IPP press

were appointed on temporary basis. Subsequently on 17.1.1995 the society decided to regularise the employees of IPP press as employees of the 1st respondent society. Since the decision of the governing body was not implemented, the petitioner along with another employee, approached this court by filing O.P.No.5108/1997. Pursuant to the judgment in that original petition, the 2nd respondent issued Ext.P1 order dated 25.7.1997 fixing the various posts, and staff strength in respect of the employees of the IPP press. No qualifications and scale of pay were prescribed to those posts. Later on, as per the decision of the governing body dated 17.1.1995, the scales of pay of the employees regularised were fixed corresponding to the scale of pay prevailing in the Family Welfare Press under the Health department.

2. The qualifications prescribed for the post of "Binder" are as follows:

"(i) Pass in Standard VII or equivalent qualification.

(ii) KGTE Lower in Book Binding."

The petitioner had passed SSLC and also obtained

KGTE qualification in Book Binding (Lower) in October, 1990. Thus the petitioner became qualified for appointment as Binder. Since he was not posted as a Binder with effect from the date he acquired the qualification, he filed O.P.No.15325/1997. By Ext.P2 judgment, this court in that original petition held that the petitioner became qualified for being appointed with effect from October, 1990 and therefore, this court directed the 1st respondent to consider this aspect and to pass appropriate orders. Although the petitioner's representation was for promoting him retrospectively as Binder with effect from October, 1990, ie., the date when he acquired the qualification prescribed for the post of Binder, Ext.P3 order was passed promoting the petitioner as Binder with effect from 23.2.1996 only. Later, by Ext.P4 order dated 15.6.1996, the said date was modified as 20.3.1996. In Ext.P3 it is stated that the petitioner was posted on working arrangement as a Binder with effect from 23.2.1996 since he made a request to that effect only on 16.2.1996. The

petitioner contends that this is wrong and that he had been making representations for regularising him as Binder with effect from October, 1990 all along since he acquired the qualification. The petitioner also contends that similarly placed persons like the petitioner have been given posting from the date of acquisition of the qualification, but in the case of the petitioner alone, this was restricted from 20.3.1996. In the above circumstances, the petitioner has sought the following reliefs in this original petition.

> "(i) to issue a writ of certiorari or other appropriate writ direction or order quashing Ext.P3, P4 and P7.
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> (ii) to issue a writ of mandamus or other appropriate writ direction or order directing the respondent to promote the petitioner as Binder retrospectively with effect from 27..7..1991 and to grant him all consequential benefits;"

3. The contention of the petitioner is that by virtue of the governing body decision dated 19.5.1999, referred to in Ext.P3 order, he was entitled to be regularised in the post of Binder with effect from October, 1990.

4. The respondents have filed a counter

affidavit, in which the respondents contended that the petitioner's services could not be regularised as Binder with effect from date of acquisition of qualification only because there was no vacancy of Binder to accommodate the petitioner till 20.3.1996. According to them, the vacancy of Binder arose only from the date from which the petitioner was posted as a Binder on working arrangement on 20.3.1996 and it is under the above circumstances that the petitioner's services were regularised as Binder with effect from 20.3.1996.

5. In spite of the specific contentions raised by the petitioner, the respondents have not chosen to produce the governing body decision dated 19.5.1999 referred to in Exts.P3 and P4 orders, nor have they mentioned in the counter affidavit the contents of that decision. The counsel for the respondents also was not present when the matter was taken up for hearing. Therefore, I could not peruse the files relating to the subject, if the same were available with him. In the above circumstances, I can only consider the validity of

the contention of the respondents in their counter affidavit which is only to the effect that there was no vacancy of Binder prior to 20.3.1996 for accommodating the petitioner and that was the reason for regularising his services as Binder only with effect from that date.

6. In this connection Ext.P2 judgment between the same parties becomes very relevant. Paragraph 2 of the said judgment reads thus:

> '2. The petitioner further submits that he really became qualified admittedly by the respondent and therefore as on 17.1.1995 when the decision of the regularisation was taken, he should have been granted his scale of pay as applicable to the Binder. The petitioner points out that in Ext.P2 it was made clear that "the change of post based on the qualification acquired after 1.7.1989 will be considered if vacancies arise," his case has been strongly recommended in Ext.P5(a) which reads as follows:
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> > "With reference to the letter cited, I may report that Mr.S.Rajan, Binder on working arrangement is working in the said post and that the vacancy is actually existing here at the IPP Offset Press. Hence his request may be considered favouorable."
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> According to the petitioner, in terms of Ext.P2, if vacancies arise, the change of post based on the qualifications acquired after 1.7.1989 will have to be considered. <u>It is an admitted case that from October, 1990 the petitioner did have the qualification necessary for a Binder and the petitioner is accordingly working as Binder against the available vacancy.</u> Accordingly, there should be a direction to consider this aspect, specifically mentioned in Ext.P2 and to pass appropriate orders within two months.'

(Underlining supplied)

As is clear from the above, there is a specific finding therein that it is an admitted case of the respondents that from October, 1990 the petitioner did have the qualification necessary for a Binder and that the petitioner was working as a Binder against the available vacancy. The respondents have not chosen to challenge Ext.P2 judgment, nor have they disputed the said findings in the said judgment. Therefore, the contention in the counter affidavit that the petitioner's services could not be regularised as a Binder with effect from the date of acquiring the qualification only because there was no vacancy of a Binder until 20.3.1996 appears to be totally misconceived.

The result of the above discussion is that there was in fact a vacancy ever since the petitioner acquired the qualifications prescribed for a Binder and in fact he was working as a Binder in an available vacancy. That being so, going by the governing body decisions, as well as the earlier judgments of this court, the petitioner has

become entitled to be regularised as a Binder with effect from the date of his acquiring qualification. However, the petitioner himself admits that the governing body decision dated 19.5.1999 is for regularisation of the service of the petitioner as a Binder with effect from 27.7.1991. That being so, I am inclined to grant the petitioner relief only to that extent. Accordingly, there would be a direction to the respondents to grant retrospective regularisation to the petitioner as a Binder with effect from 27.7.1991 and grant him all monetary and other service benefits available to him on such retrospective regularisation as a Binder with effect from 19.7.1991.

Original petition is disposed of as above.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE